

OGC HAS REVIEWED.

17 August 1956

MEMORANDUM FOR: Mr. Houston

SUBJECT : Executive Positions in CIA - Exemption From Annual and Sick Leave Act

1. The Annual and Sick Leave Act of 1951, as amended, (Title II, P. L. 233, 82nd Congress) provides:

"Sec. 202. (a) Except as provided in subsection (b), this title shall apply to all civilian officers and employees of the United States. . ."

The exemptions in subsection (b) do not include any officers or employees of this Agency. Subsection (c)(1), added by amendment in Public Law 102, 83rd Congress, provides exemptions from the Act of persons appointed by the President whose rates of basic compensation exceed the maximum rate provided in the General Schedule of the Classification Act of 1949, as amended. It also provides for the exemption of such other officers as may be designated by the President. The Director is therefore exempt by the terms of subsection (c)(1) and the Deputy Director has been exempted by Executive Order 10540, dated 29 June 1954, issued under authority of subsection (c)(1). At the present time all other full time officers and employees of the Agency are subject to the Act.

2. The legislative history of the Annual and Sick Leave Act goes into the reasons for the exemption from that Act of certain officers of the Government. The conference report states that the removal of such officials from the existing leave system is based on the theory that such officials are, by virtue of their respective offices and positions, actually on duty at all times, including periods of vacation or sickness. It adds that since such officials now have complete freedom to absent themselves from duty as they see fit, it is incompatible with their offices and positions to make them subject to a leave system requiring the maintenance of attendance and leave records and to allow them lump sum payment for unused leave. Section 202(c)(1) of the Act also provides that no officer to whom such Act applies shall be deemed to be entitled to the compensation attached to his office solely by virtue of his status as an officer. The conference report

points out that the purpose of this provision is to establish a standard under which it can be determined which officers in the executive branch are entitled to compensation attached to their respective offices solely by virtue of their respective statuses as officers and which officers in the executive branch are not so entitled. Thus, officers exempted from the Act are now in the class entitled to compensation by virtue of their positions regardless of time and attendance whereas those not exempted are subject to the laws and regulations governing hours of work, leaves of absence, and related matters.

3. The theory that certain officials are, by virtue of their respective offices and positions, actually on duty at all times, including periods of vacations and sickness would certainly apply to many officials of this Agency. On that theory it would not be unreasonable to provide for exemptions from the Annual and Sick Leave Act of officers of the Agency in either the proposed Category 1 or Category 2, or both. However, section 202 makes it clear that officers and employees of the Agency, except for the Director and the Deputy Director, are subject to the provisions of the Annual and Sick Leave Act. Because of the wording of the statute, there is no authority in the Director to exempt other officers of the Agency from that Act. If certain other officers are to be exempted it must be done by executive order under the authority of section 202(c)(1)(C).

25X1A9a

[REDACTED]

Office of General Counsel